

~~EASTERN DISTRICT OF NEW YORK~~

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GEORGINA MORGENSTERN,

Plaintiff,

-against-

COUNTY OF NASSAU; NASSAU LOCAL 830, CIVIL  
SERVICE EMPLOYEES ASSOCIATION, INC.; THOMAS R.  
SUOZZI, in his individual and official capacities; ANTHONY  
M. CANCELLIERI, in his individual and official capacities;  
PATRICIA BOURNE, in her individual and official capacities;  
JOHN P. DONNELLY, in his individual and official capacities,

Defendants.  
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**04-CV-0058  
(JS) (ARL)**

**DECLARATION  
OF  
ERICA M. HABER  
IN OPPOSITION TO  
PLAINTIFF'S  
MOTION TO STRIKE**

ERICA M. HABER, an attorney duly admitted to practice law in the courts of the State of New York, and admitted to practice in the United States District Court for the Eastern District of New York, declares as follows, under the penalties of perjury:

1. I am a Deputy County Attorney in the Office of the Nassau County Attorney, attorneys for defendants COUNTY OF NASSAU, THOMAS R. SUOZZI, ANTHONY M. CANCELLIERI, PATRICIA BOURNE, and JOHN P. DONNELLY (hereinafter referred to collectively as the "County Defendants") in this action. I am familiar with the facts and circumstances as set forth herein, as a result of research and my review of the County Attorney's file.

2. This Declaration is made in opposition to Plaintiff's February 11, 2008 motion to strike the affidavits of Edward P. Mellina and Donald Hohn, and the Declaration of Lorna B. Goodman, which were submitted in support of the County Defendants' motion for summary judgment filed on January 18, 2008.

3. This wrongful termination action was commenced by Plaintiff on January 8, 2004.

4. On January 18, 2008, the County Defendants filed a motion for summary judgment pursuant to *Rule 56* of the *Federal Rules of Civil Procedure* on the ground that there is no genuine issue of material fact to be tried.

5. On February 11, 2008, Plaintiff filed her opposition to the County Defendants' motion for summary judgment.

6. Plaintiff filed the instant motion to strike the affidavits of non-party witnesses Edward P. Mellina and Donald Hohn, and the declaration of non-party witness Nassau County Attorney Lorna B. Goodman, in conjunction with the filing of her opposition papers.

7. An additional copy of the Affidavit of Edward P. Mellina dated January 14, 2008, is annexed hereto as "*Exhibit A*."

8. An additional copy of the Declaration of Lorna B. Goodman dated January 17, 2008, is annexed hereto as "*Exhibit B*."

9. An additional copy of the Affidavit of Donald Hohn dated January 14, 2008, is annexed hereto as "*Exhibit C*."

10. During the course of discovery, Plaintiff testified at a deposition held on August 3, 2006. Copies of the relevant portions of Plaintiff's deposition testimony are annexed hereto as "*Exhibit D*."

11. During the course of discovery, Defendant Cancellieri testified at a deposition held on April 18, 2007. Copies of the relevant portions of Defendant Cancellieri's deposition testimony are annexed hereto as "*Exhibit E*."

12. During the course of discovery, Defendant Bourne testified at depositions held on April 13, 2007 and June 6, 2007. Copies of the relevant portions of Defendant Bourne's deposition testimony are annexed hereto as "*Exhibit F*."

13. During the course of discovery, Plaintiff served requests for interrogatories on the County Defendants. A copy of Plaintiff's Second Set of Interrogatories dated June 18, 2007, is annexed hereto as "*Exhibit G.*"

14. During the course of discovery, Plaintiff served requests for the production of documents on the County Defendants. A copy of Plaintiff's Third Request for the Production of Documents dated June 18, 2007, is annexed hereto as "*Exhibit H.*"

15. On July 10, 2007, Plaintiff filed a motion to compel discovery. A copy of Plaintiff's letter motion to compel is annexed hereto as "*Exhibit I.*"

16. On July 12, 2007, the County Defendants opposed Plaintiff's motion to compel discovery, and on August 10, 2007, the Honorable Arlene R. Lindsay denied Plaintiff's motion in its entirety, save for one e-mail which the Court directed the County Defendants to produce to Plaintiff. Copies of the County Defendants' July 12, 2007, letter opposing Plaintiff's motion to compel and the Order issued by Judge Lindsay on August 10, 2007, are annexed collectively hereto as "*Exhibit J.*"

17. Copies of the documents provided in response to Plaintiff's discovery demands pertaining to Nassau County Planning Department employee Donald Hohn are annexed hereto as "*Exhibit K.*"

18. During the course of discovery, Plaintiff noticed the County Defendants that she wished to inspect and photograph the Legislative Chamber located on the fifth floor of One West Street, Mineola, New York. A copy of Plaintiff's First Request for Entry Upon Land for Inspection and Other Purposes dated June 18, 2007, is annexed hereto as "*Exhibit L.*"

19. During the course of discovery, the County Defendants responded to Plaintiff's request for interrogatories. A copy of the County Defendants' Responses to Plaintiff's First Set of Interrogatories is annexed hereto as "*Exhibit M.*"

For all the reasons set forth herein, in the accompanying Memorandum of Law, and in the County Defendants Motion for Summary Judgment, it is respectfully requested that Plaintiff's motion to strike be denied in its entirety. It is further requested that Plaintiff's affidavit submitted in connection with her opposition to the County Defendants' motion for summary judgment be stricken from the record, and that the Court grant such other and further relief as it deems just and proper.

Dated: Mineola, New York  
February 26, 2008

\_\_\_\_\_/s/\_\_\_\_\_  
ERICA M. HABER